

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (a)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (a)(1), (a)(2), or (c) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraph (a)(1) or (a)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(b) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (a) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use—

(1) For a single-employer plan, the number of participants for whom premiums were payable for the plan year preceding the premium payment year, or

(2) For a multiemployer plan, the number of participants determined as of the following date:

(i) If the premium payment year is the plan's second plan year, the first day of the first plan year; or

(ii) If the premium payment year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before the latest of—

(1) The fifteenth day of the tenth full calendar month that began on or after the later of—

(i) The first day of the premium payment year; or

(ii) The day on which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by title IV of ERISA.

(d) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier. The entire premium computed under this part is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 4006.5(f).

(e) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as not having been made.

[61 FR 34020, July 1, 1996, as amended at 63 FR 68685, Dec. 14, 1998; 71 FR 31081, June 1, 2006]

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to file the applicable forms and to submit the premium payment for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any

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entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) notices of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates a termination proceeding under section 4042 of

ERISA, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212-0009)